

TRANSPORTATION REPORT

From: Terry Whiteside

To: The Montana Wheat & Barley Committee

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NEW STB COMMISSIONER APPOINTED - ANN BEGEMAN

Ann Begeman, President Obama's choice to join the Surface Transportation Board, told senators at her nomination hearing on March 10th, she will work toward making sure shippers as well as railroads can approach the STB with their issues.

"I believe it should be accessible and affordable to all the stakeholders," she told the Commerce, Science and Transportation Committee. Begeman made the comment in response to questioning by Committee Chairman Jay Rockefeller, D-W.Va., after he told her, "I do have significant concerns over how accessible the STB is, even today, to captive shippers."

Shipper critics of the current regulatory system say the STB's policies are tilted to favor railroad profits over shipper complaints, and that a high fee schedule to begin a major rate challenge also inhibits many customers. The STB has begun a rulemaking process that could slash those fees, and has made the first steps to review some other policies that shippers and friendly lawmakers say should be revised. Railroads and related industry groups have started to resist some of the changes under consideration and won backing from leaders of the House Transportation and Infrastructure Committee.

Begeman pledged to be "fair" and to "have an open mind," but added, "I don't have an empty mind," after spending years working on railroad and shipper issues.

She has been Republican staff director for the Senate Commerce, Science, and Transportation Committee for nearly two years, a period in which the panel passed a major rail regulatory reform bill that would have ordered the STB to take a friendlier stance toward shippers and put railroads under tougher competition rules. Railroads fought hard against it, and the measure never reached the Senate floor before it expired at the end of the last Congress. Begeman had also served a long stint on the committee from 1995 to 2004.

Rockefeller told Begeman that her sense of fairness should be aimed at helping captive shippers, telling her they face a situation of "lunacy" in which railroads have market power over them and can set high freight rates for many customers with no other rail competition for the shipments. He also complained about the STB's measure of railroads' "revenue adequacy," a regulatory yardstick used in rate challenge cases and other agency work; it regularly judges most major railroads to be taking in too little revenue for all their needs, which the chairman said was in sharp contrast to their strong earnings.

Begeman avoided agreeing with Rockefeller's comments. She told the committee that if confirmed by the Senate she will look into the various rail regulatory issues without bias, but would go into the job with considerable knowledge of many aspects.

Ann Begeman, who hails originally from South Dakota, was confirmed by the Senate on Friday, April 15th. She will join Frank Mulvey and Dan Elliot as the three member team who run the STB.

STB SIDES WITH ARKANSAS ELECTRIC CO-OP AND FINDS BNSF APPROACH UNREASONABLE

Federal regulators handed an important victory to coal shippers, rejecting an attempt by railroads to hold them accountable for tens of millions of dollars in coal dust cleanup costs. The Coal Dust

issue came up when BNSF alleged that coal dust accumulation on its tracks has results in train derailments and BNSF wanted utilities to pay for clean it up.

By a 3-0 vote, the Surface Transportation Board on March 3 sided with [Arkansas Electric Co-op Corp.](#), saying a tariff that BNSF Railway Co. planned to impose on the G&T in 2009 was unreasonable and riddled with questions about appropriate ways to monitor coal dust emissions.

“While the goal of minimizing the release of coal dust during rail transport is a reasonable objective for railroads and coal shippers to pursue, the challenged tariff in this case simply creates too much uncertainty to be deemed a reasonable practice,” the board said in a 16-page ruling.

Steve Sharp, principal engineer, civil and fuels for AECC, said the Little Rock, Ark.-based G&T was pleased by the decision. “We feel it was important to hold the railroads accountable and prevent them from passing on maintenance costs to customers who already pay for maintenance through their contracts,” he said.

AECC filed an initial complaint against BNSF in October 2009, and later was joined by NRECA and other trade associations. Shippers said that the BNSF plan could have cost \$100 million a year that would likely be passed on to co-op members and ratepayers.

The STB acknowledged that coal residue buildup in track beds presents a legitimate maintenance issue for freight railroads, and said carriers can establish reasonable requirements to minimize spillage from railcars.

However, the panel held that provisions of BNSF’s tariff were so vague that shippers could violate them, and face fines or sanctions, even if they followed the railroad’s specific directives on how to load cars and how to treat cargo with a chemical to control coal dust dispersal.

“A coal dust emission requirement that a shipper may be unable to meet, even if the currently accepted methods of coal dust suppression are employed, is problematic,” the board said.

It also agreed with shippers that BNSF's proposed system to monitor coal dust emissions was flawed and could produce inaccurate readings. And in one case, the board noted, BNSF refused to provide emissions data to Ameren, preventing the Midwest-based IOU from determining whether its coal dust suppression methods were working.

The board said it hopes shippers and railroads will agree on solutions to the problem, in lieu of a government-sanctioned approach to coal dust emissions.

STB OPENS A PROCEEDING ON RAIL COMPETITION

The STB on March 12th opened a proceeding on the state of Rail Competition in the country. The purpose is to provide NOTICE THAT THE BOARD WILL RECEIVED COMMENTS AND HOLD A PUBLIC HEARING TO EXPLORE THE CURRENT STATION OF COMPETITION IN THE RAILROAD INDUSTRY. Even before the proceeding opened, after announcement of the upcoming proceeding, some railroad leaning House members sent a letter to the STB - stating that they wanted the STB to not change anything for the railroads because in their words, " any policy change made by the STB which restricts the railroads' abilities to invest, grow their networks and meet the nation's freight transportation demands will be opposed by the committee." This push and overt pressuring by the railroads/Congress to the STB BEFORE it opens a proceeding is most unusual.

In this TR we will cover some of the shipper/rail customers opening statements and in the next TR we will continue to report on shipper and railroads opening statements.

Summary of Opening Statements:

The Alliance for Rail Competition (ARC), its members, including PPL Energy- Plus LLC, Montana Wheat & Barley Committee, Colorado Wheat Administrative Committee, Idaho Wheat Commission, Idaho Barley Commission, Nebraska Wheat Board, Kansas Wheat Commission, Nebraska Wheat Board, Oklahoma Wheat Commission, South Dakota Wheat Commission, Texas Wheat Producers Board, Washington Grain Commission and the National Association of Wheat Growers

-stated that the main purpose of these comments is to urge the Board not to lose sight of shippers' need for protection against unreasonable rail rates and unreasonable railroad practices as it directs its attention to competition issues. In many regions of the country, and particularly for shippers of agricultural commodities in large Western states that are predominantly rural, rail-to-rail competition is non-existent for most shippers, and is likely to remain non-existent, no matter how much effort the Board puts into eliminating or reducing anticompetitive policies and precedents. Distances are simply so great, and individual origin volumes so small, that attracting effective competitors for monopoly incumbent railroads is unlikely under any circumstances.

Joint Comments of Shippers:

ALLIANCE FOR RAIL COMPETITION, THE AMERICAN CHEMISTRY COUNCIL, AMERICAN FOREST AND PAPER ASSOCIATION, AMERICAN PUBLIC POWER ASSOCIATION, THE CHLORINE INSTITUTE, COLORADO WHEAT ADMINISTRATIVE, COMMITTEE, CONSUMERS UNITED FOR RAIL EQUITY, EDISON ELECTRIC INSTITUTE, GLASS PRODUCERS TRANSPORTATION COUNCIL, IDAHO BARLEY COMMISSION, IDAHO WHEAT COMMISSION, KANSAS WHEAT COMMISSION, LARGE PUBLIC POWER COUNCIL, MONTANA FARMERS UNION, MONTANA WHEAT & BARLEY COMMITTEE, NATIONAL GRAIN AND FEED ASSOCIATION, THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION, NEBRASKA WHEAT BOARD, OKLAHOMA WHEAT COMMISSION, PORTLAND CEMENT ASSOCIATION, SOUTH DAKOTA WHEAT COMMISSION, TEXAS WHEAT PRODUCERS BOARD, THE FERTILIZER INSTITUTE, U.S. CLAY PRODUCERS TRAFFIC ASSOCIATION, AND WASHINGTON GRAIN COMMISSION

In that Notice, the Board indicated that it would be seeking written comments to explore the current state of competition in the railroad industry and possible policy alternatives to facilitate more competition, where appropriate. In its Notice, the Board presented the general background to its inquiry, and indicated that the proceeding was intended as a public forum "to discuss access and competition in the rail industry," with a view as to:

What, if any, measures the Board can and should consider to modify its

competitive access rules and policies; whether such modification would be appropriate given changes over the last 30 years in the transportation and shipping industry; the effects on rates and service these rules and policies have had; and the likely effects on rates and service of changes to these policies.'

The Board's Notice also set forth specific questions on various topics. The Interested Parties are submitting these Joint Comments to address topics and questions that the Board posed in its Notice. A number of the Interested Parties are also submitting individual comments on other topics and questions noted by the Board as well as related areas, in order to present the Board with a complete view of their positions in this matter.

The Interested Parties warmly applaud the Board for initiating this proceeding to inquire how the state of the railroad industry has changed since the current policies governing railroad competition were adopted. The Interested Parties strongly believe that the Board's competition policies are due for change.

The railroad industry typically attempts to portray any shipper effort on behalf of greater competition as seeking "re-regulation." This myth needs to be dispelled at the very outset. In fact, shippers seek real and meaningful deregulation so that free markets can flourish, in the same way that deregulation has resulted in a competitive revolution in the telecommunications industry and other industries.

As noted further in the body of these comments, comparing current railroad "deregulation" to that which has occurred in other industries shows how incomplete the current regime of railroad deregulation actually is. If the current

rules applicable to railroad competition were applied in the telecommunications industry, for example, the result would be a system that few people would view as deregulation at all.

Suppose that after "Ma Bell" had been broken up into the "Baby Bells," each local Baby Bell had been left with the power to control local telephone switching and charge any price it wanted over the bottleneck local switching network. Consumers could use any long distance carrier they wanted, but in order to reach that long distance carrier, they would have to pay a monopoly rate which cancels out any cost advantage of using long distance carrier other than the local Baby Bell. That would be a situation that is directly analogous to the situation in which rail shippers find themselves. If this sort of "deregulation" had been imposed in the telecommunications industry, the public would be rightly outraged and the system would quickly be corrected. The fact of the matter is that, under the current system in the railroad industry, rail carriers have been given a license to engage in a degree of monopolization that would not be tolerated in any other industry.

As discussed in the body of these comments, the current agency rules on rail competition were frequently justified on the basis of the railroads' poor financial health. As shown below, railroads today are financially robust and do not need government subsidies in the form of a license to monopolize. Again, the telecommunications industry provides a close analogy. If railroad arguments about the harmful effects of competition were valid, the telecommunications industry (and trucking, natural gas pipelines, and other industries) would have withered on the vine following its thoroughgoing deregulation. Instead, capital investment and innovation in telecommunication has boomed and the total revenues of telecommunications companies have exploded as new products and services have been developed. The telecommunications industry as a whole has never been healthier.

The Interested Parties therefore strongly believe that it is time to enact policies implementing real deregulation of the railroad industry and real competition. The effective competition called for by Congress in the Rail Transportation Policy should deter railroads from abusing market power by raising rates and shifting costs to shippers, and should encourage railroads to improve service quality.

